

MT LEGISLATIVE HISTORY

Chapter 73 1972

Bill H 5 42

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) MAR 08 ☒ C

Hearing Date(s) JAN 12 ☒ C

MAR 10 ☒ C

JAN 20 ☒ C

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\_\_\_\_\_ ☐ C

\_\_\_\_\_ ☐ C

Date Out \_\_\_\_\_ ☐ C

JAN 20 ☒ C

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

FORTY-FIFTH \_\_\_\_\_ LEGISLATIVE SESSION

1977

COMMITTEE ON \_\_\_\_\_ JUDICIARY

| BILL NO. | ENTERED<br>COMM.     | DATE<br>CONSIDERED           | OUT OF<br>COMM. | DO PASS<br><u>DATE</u> | DO NOT<br>PASS<br><u>DATE</u> | DO PASS<br>AS AMEND.<br><u>DATE</u> | BE CON-<br>CURRED IN<br><u>DATE</u> | BE CONC. IN<br>AS AMENDED<br><u>DATE</u> | BE NOT CON-<br>CURRED IN<br><u>DATE</u> |
|----------|----------------------|------------------------------|-----------------|------------------------|-------------------------------|-------------------------------------|-------------------------------------|------------------------------------------|-----------------------------------------|
| S.B. 9   | 1-3-77               | 1-11-77                      | 1-15-77         |                        |                               | 1-15-77                             |                                     |                                          |                                         |
| S.B. 12  | 1-3-77               | 2-16-77                      | 2-18-77         |                        |                               | 2-18-77                             |                                     |                                          |                                         |
| S.B. 20  | 1-3-77               | 1-7-77                       | 1-7-77          |                        |                               | 1-7-77                              |                                     |                                          |                                         |
| S.B. 23  | 1-11-77              | 1-18-77                      | 1-29-77         |                        | 1-29-77                       |                                     |                                     |                                          |                                         |
| S.B. 23  | Rereferred<br>2-1-77 | 2-4-77                       |                 |                        |                               | 2-4-77                              |                                     |                                          |                                         |
| S.B. 27  | 1-3-77               | 1-11 &<br>1-14-77            | 2-17-77         |                        |                               | 2-17-77                             |                                     |                                          |                                         |
| S.B. 30  | 1-3-77               | 1-11, 1-13,<br>1-17-77       | 1-17-77         |                        |                               | 1-20-77                             |                                     |                                          |                                         |
| S.B. 32  | 1-3-77               | Duplicate<br>of S.B. 40      | 2-10-77         |                        | 2-10-77                       |                                     |                                     |                                          |                                         |
| S.B. 33  | 1-3-77               | 1-11 &<br>1-14-77            | 2-17-77         |                        |                               | 2-17-77                             |                                     |                                          |                                         |
| S.B. 34  | 1-3-77               | 1-17, 1-18,<br>1-28, 1-29-77 | 1-31-77         |                        |                               | 1-31-77                             |                                     |                                          |                                         |
| S.B. 37  | 1-4-77               | 1-14-77                      | 2-10-77         |                        |                               | 2-10-77                             |                                     |                                          |                                         |
| S.B. 40  | 1-5-77               | 1-12-77                      | 1-20-77         | 1-20-77                |                               |                                     |                                     |                                          |                                         |
| S.B. 41  | 1-5-77               | 1-12 &<br>1-20-77            | 2-18-77         |                        |                               | 2-18-77                             |                                     |                                          |                                         |
| S.B. 42  | 1-5-77               | 1-12 &<br>1-20-77            | 1-20-77         | 1-20-77                |                               |                                     |                                     |                                          |                                         |
| S.B. 43  | 1-5-77               | 1-12 &<br>1-20-77            | 1-20-77         |                        |                               | 1-20-77                             |                                     |                                          |                                         |
| S.B. 53  | 1-6-77               | 1-12 &<br>1-20-77            | 1-20-77         | 1-20-77                |                               |                                     |                                     |                                          |                                         |

(Use Separate Sheet for Senate, House Bills, and Resolutions)

1 Senate BILL NO. 42  
 2 INTRODUCED BY Lowell Turner  
 3 (Interim Judiciary Committee Bill)  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTINUE CERTAIN  
 5 IMMUNITIES FROM SUIT ESTABLISHED BY CERTAIN STATUTES BY  
 6 REENACTING THESE STATUTES UNDER PROVISIONS OF ARTICLE II,  
 7 SECTION 18, OF THE CONSTITUTION OF THE STATE OF MONTANA;  
 8 AMENDING, CLARIFYING, AND REENACTING SECTIONS 28-603,  
 9 77-2308, 89-115, AND 89-3514, R.C.M. 1947."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 28-603, R.C.M. 1947, is amended to  
 13 read as follows:

14 "28-603. Powers of board. (1) Boards of county  
 15 commissioners may in their discretion establish fire seasons  
 16 annually during which no person shall ~~may~~ ignite or set any  
 17 forest fire, or ~~slash-burning~~ slash-burning fire, or ~~land~~  
 18 ~~clearing~~ land-clearing fire, or ~~debris---~~ debris-burning  
 19 debris-burning fire, or any open fire, within any forest,  
 20 range, or crop lands, subject to the provisions of this act,  
 21 without having obtained an official written permit to ignite  
 22 or set such fire from a county rural fire chief or from a  
 23 district rural fire chief authorized by the board to issue  
 24 such permits for such lands.

25 (2) Any person who ~~shall-ignite~~ ignites or set ~~sets~~

1 any forest fire, or ~~slash---~~ slash-burning fire, or  
 2 ~~land---~~ land-clearing fire, or ~~debris---~~ debris-burning  
 3 debris-burning fire, or any open fire, within any forest,  
 4 range, or crop land subject to the provisions of this act  
 5 without first having obtained a written permit to ignite or  
 6 set such fire ~~shall-be~~ is guilty of a misdemeanor.

7 (3) To augment rural crews in case of serious  
 8 emergency, the boards may provide for the organization and  
 9 training of voluntary urban fire crews to be used in rural  
 10 areas.

11 (4) Any county rural fire chief and/or district rural  
 12 fire chief or his deputy may enter private property either  
 13 with-or-without or direct the entry of fire control crews  
 14 for the purpose of suppressing fires, and ~~are-exempt-from~~  
 15 ~~any-damage-resulting-from-such-activity~~ A chief or deputy  
 16 and the county or rural district are immune from suit for  
 17 injury to persons or property resulting from actions taken  
 18 to suppress fires under this subsection.

19 (5) The board is authorized to appropriate from the  
 20 general fund of the county not to exceed ~~fifteen--thousand~~  
 21 ~~dollars--(\$15,000)~~ per year for the purchase, care, and  
 22 maintenance of fire-fighting firefighting equipment, or for  
 23 the payment of wages to skilled operators of heavy  
 24 mechanized equipment in the suppression of fires when ~~deemed~~  
 25 considered necessary; or if the general fund is budgeted to

1 the full limit, the board may at any time fixed by law for  
2 levy and assessment of taxes levy a tax at such rate as in  
3 their judgment will be necessary to raise such needed sum  
4 not to exceed fifteen-thousand-dollars-{\$15,000}."

5 Section 2. Section 77-2308, R.C.M. 1947, is amended to  
6 read as follows:

7 "77-2308. Immunity from liability. (1) Neither the  
8 state nor any political subdivision of the state, nor the  
9 agents or representatives of the state or any political  
10 subdivision thereof, ~~shall be~~ are liable for personal injury  
11 or property damage sustained by any person appointed or  
12 acting as a volunteer civilian defense worker, or member of  
13 any agency engaged in civilian defense activity during a  
14 disaster or catastrophe. This section does not affect the  
15 right of any person to receive benefits or compensation to  
16 which he might otherwise be entitled under the ~~workmen's~~  
17 ~~workers'~~ compensation law or any pension law or any act of  
18 Congress ~~congress~~.

19 (2) Neither the state nor any political subdivision of  
20 the state, nor, except in cases of willful misconduct, gross  
21 negligence, or bad faith, the employees, agents, or  
22 representatives of the state or any political subdivision  
23 thereof, nor any volunteer or auxiliary civilian defense  
24 worker or member of any agency engaged in civilian defense  
25 activity during a disaster or catastrophe, nor the owners of

1 facilities used for civil defense shelters, pursuant to a  
2 fallout shelter license or privilege agreement and while  
3 complying with or reasonably attempting to comply with this  
4 chapter, or any order, ~~or~~ rule or regulation promulgated  
5 under the provisions of this chapter, or pursuant to any  
6 ordinance relating to blackout or other precautionary  
7 measures enacted by any political subdivisions of the state,  
8 ~~shall be~~ are liable for the death of or injury to persons,  
9 or for damage to property, as a result of any such  
10 activity."

11 Section 3. Section 89-115, R.C.M. 1947, is amended to  
12 read as follows:

13 "89-115. Water funds -- rates -- sale of water --  
14 appeals to board -- lease and sale of water rights and  
15 property. (1) Subject to this act and section 89-103.2, the  
16 department may fix and establish the prices, rates, and  
17 charges at which the resources and facilities made available  
18 under this act may be sold and disposed of ~~and~~ enter into  
19 contracts and agreements, and do those things which in its  
20 judgment are necessary, convenient, or expedient for the  
21 accomplishment of the purposes and objects of this act,  
22 under such general regulations, and upon such terms,  
23 limitations, and conditions as it prescribes, ~~the~~ the  
24 department shall enter into the contracts and fix and  
25 establish the prices, rates, and charges so as to provide at

1 all times funds which will be sufficient to pay all costs of  
 2 operation and maintenance of the works authorized by this  
 3 act, together with necessary repairs thereto, and which will  
 4 provide at all times sufficient funds to meet and pay the  
 5 principal and interest of all bonds or loans as they  
 6 severally become due and payable; ~~this~~ this act does not  
 7 authorize any change, alteration, or revision of those  
 8 rates, prices, or charges as established by any contract  
 9 entered into under this act except as provided by the  
 10 contract.

11 (2) An incorporated water users' association that is  
 12 sustaining and responsible for the operations of a works is  
 13 solely liable for any court action which may be brought  
 14 against it ~~or the state of Montana~~ for any injury or damages  
 15 occurring on the works caused by a failure to maintain safe  
 16 working and operating conditions. The state of Montana is  
 17 not liable for injury to a person or property that occurs on  
 18 a works as a result of a failure by a water users'  
 19 association to maintain the works in a safe working and  
 20 operating condition.

21 (3) A contract made by the department for the sale of  
 22 water, use of water, water storage, or other service, or for  
 23 the sale of any property or facilities, shall provide that  
 24 in the event of a failure or default in the payment of  
 25 moneys specified in the contract to be paid to the

1 department, the department may, upon notice as is prescribed  
 2 in the contract, terminate the contract and all obligations  
 3 thereunder. The act of the department in ceasing on default  
 4 to furnish or deliver water, use of water, water storage, or  
 5 other service under the contract does not deprive the  
 6 department of, or limit any remedy provided by the contract  
 7 or by law for the recovery of moneys due or which may become  
 8 due under the contract.

9 (4) (a) A person aggrieved by a decision of the  
 10 department to terminate any contract under subsection (3)  
 11 may appeal to the board and be heard thereon by filing  
 12 written notice of the appeal with the department within ten  
 13 ~~ten~~ days after receiving notice of termination of the  
 14 contract from the department. The termination of the  
 15 contract ~~shall be~~ is stayed if an appeal is taken.

16 (b) If a dispute arises between the department and  
 17 another party regarding amounts owing or the terms and  
 18 conditions under a water marketing or water purchase  
 19 contract, or under a contract for the construction or repair  
 20 of works, that party may appeal to the board for a hearing  
 21 thereon and a resolution of the dispute by filing written  
 22 notice of the appeal with the department within ~~thirty~~ thirty  
 23 days after the final decision of the department regarding  
 24 the dispute.

25 (5) Subject to the approval of the board under section

1 89-103.2, the department may sell, transfer to water user  
 2 associations, abandon, or otherwise dispose of any rights-of  
 3 way ~~rights-of-way~~, easements, or property when it determines  
 4 that they are no longer needed for the purposes of this act  
 5 or lease or rent the same or otherwise take and receive the  
 6 income or profit and revenue therefrom. A determination  
 7 shall be made by the department as to the market value of  
 8 ~~rights-of-way~~ ~~rights-of-way~~, easements, or property to be  
 9 sold, transferred, abandoned, or otherwise disposed of. All  
 10 income or profit and revenue of the works and all moneys  
 11 received from the sale or disposal of water, use of water,  
 12 water storage, or other services and from the operation,  
 13 lease, sale, or other disposition of the works, property,  
 14 and facilities acquired under this act shall be deposited  
 15 to the state general fund."

16 Section 4. Section 89-3514, R.C.M. 1947, is amended to  
 17 read as follows:

18 "89-3514. Permit construed as added requirement --  
 19 exception -- immunity. (1) The granting of a permit under  
 20 this act does not affect any other type of approval required  
 21 by any other statute or ordinance of the state, of any  
 22 political subdivision, or of the United States, but is an  
 23 added requirement; however, if a political subdivision  
 24 enacts, in harmony with the purposes of this act, permit  
 25 issuance ordinances, regulations, or resolutions and

1 land-use ordinances, regulations, or resolutions which meet  
 2 or exceed the minimum standards of the board, and if the  
 3 administrative and enforcement procedures established for  
 4 those ordinances, regulations, or resolutions are found  
 5 acceptable by the board, no permit from the department is  
 6 required; however, if the board determines that there is a  
 7 failure by a political subdivision to comply with the  
 8 intent, purposes, and provisions of this act and the minimum  
 9 standards adopted thereunder, the powers of the political  
 10 subdivision may be suspended after hearing, and the minimum  
 11 standards adopted by the board shall be enforced by the  
 12 department until such time as the board determines that the  
 13 political subdivision will comply. The grant or denial of a  
 14 permit does not have an effect on a remedy of a person at  
 15 law or in equity; however, where it is shown that there is a  
 16 wrongful failure to comply with this act, there is a  
 17 rebuttable presumption that the obstruction was the  
 18 proximate cause of the flooding of the land of a person  
 19 bringing suit.

20 (2) An action for damages sustained because of injury  
 21 caused by an obstruction for which a permit has been granted  
 22 under this act may not be brought against the state, the  
 23 board, a member of the board, or the department. This act  
 24 does not interfere with the right of the United States to  
 25 regulate interstate commerce or the navigable waters of the

LC 0137/01

I United States."

-End-

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 12, 1977

The meeting of the Judiciary Committee was called to order by Chairman Jean Turnage on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members were present with the exception of Senator Roberts who was excused. Senator Warden was excused at 10:00 a.m. as she had to testify at another meeting.

The following witnesses were present to testify:

Representative John Vincent - District 78  
Glen Drake, Helena attorney - Montana League of Cities and Towns and the American Insurance Association  
Gregg McCurdy - Montana Association of Counties  
W. Boyce Clarke - Independent Insurance Agents of Montana  
Arnold Kuenning - Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana  
Mike Young, Attorney - Department of Administration  
Bob Biggerstaff - Montana Association of Conservation Districts  
Gregg Morgan, Bozeman attorney - Montana State Bar Association  
Robert Corcoran, Chief Tax Counsel - Montana Department of Revenue  
William L. Romine.- Montana attorney  
John Bell, Helena - attorney

CONSIDERATION OF SENATE BILLS 40, 41, 42, 43 and 53:

Senator Towe requested that the bills be taken up in the following order: S.B. 43, 53, 41, 42 and 40. The request was granted by Chairman Turnage. Sen. Towe noted S.B. 32 is identical to S.B. 43.

Senator Towe then explained each bill in the above order. While doing this, he told the committee that these bills, in order to pass, would require a two-thirds vote by each House. This is an exception to the general rule governing sovereign immunity.

Representative Vincent, appearing as a proponent of S.B. 43, stated that he supported this bill with one exception and that is relative to the limits in subsection (b) on pages 4 and 5. He offered the committee two suggested alternatives which he thought would improve the bill. He was then thanked by the Chairman for his testimony.



Other proponents of the bills appearing and offering testimony to the committee were:

Glen Drake, Helena attorney, representing the American Insurance Association and the Montana League of Cities and Towns;

Gregg McCurdy, representing the Montana Association of Counties, who had one question on S.B. 43, page 5, line 3, regarding the words "taxing districts";

W. Boyce Clarke, representing the Independent Insurance Agents of Montana, who presented a prepared statement on each bill to the committee (see attached). Mr. Clarke also commended the subcommittee and their staff on doing a very good job on these bills.

Arnold Kuenning, an Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana. Mr. Kuenning presented the committee with a prepared statement. (See attachment)

Mike Young, Attorney for the Montana Department of Administration;

Bob Biggerstaff, representing the Montana Association of Conservation Districts, who said that they are proponents but are concerned that they might not be included.

Gregg Morgan of the State Bar Association said that they wished to applaud the committee and support the work done.

Opponents appearing were:

Bob Corcoran, representing Bill Groff, Director of the Department of Revenue, who said the Department of Revenue was concerned with a couple of items in the bills, namely, in Title 84 the portion referring to claims of refunds of taxes and the portion on quiet title actions in S.B. 40. Senator Towe said that was just a deletion of language.

Bill Romine, attorney, representing only himself. Mr. Romine presented the committee with a prepared statement on S.B. 41. (Attached)

At this time, Gregg Morgan of the State Bar of Montana testified before the committee, suggesting amendments or withdraw S.B. 41 as it may be unconstitutional as a breach of contract. (See Exhibit 1)

John Bell, a Helena attorney who said he believes S.B. 41 is clearly unconstitutional.

Mike Young, Attorney for the Montana Department of Administration, at this time said that his previous comments were only in regard to S.B. 43, 53 and 40.

# ROLL CALL

JUDICIARY

COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date

*1/12/77*

| NAME                        | PRESENT      | ABSENT | EXCUSED                   |
|-----------------------------|--------------|--------|---------------------------|
| TURNAGE, Jean, Chairman     | ✓            |        |                           |
| ROBERTS, Joe, Vice-Chairman | <del>✓</del> |        | <i>Ex</i>                 |
| MURRAY, William             | ✓            |        |                           |
| OLSON, Stuart               | ✓            |        |                           |
| LENSINK, Everett            | ✓            |        |                           |
| REGAN, Pat                  | ✓            |        |                           |
| TOWE, Tom                   | ✓            |        |                           |
| WARDEN, Margaret            | ✓            |        | <i>Ex</i><br><i>10:00</i> |
|                             |              |        |                           |
|                             |              |        |                           |
|                             |              |        |                           |
|                             |              |        |                           |
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|                             |              |        |                           |
|                             |              |        |                           |
|                             |              |        |                           |
|                             |              |        |                           |

Each day attach to minutes.

SENATE BILL NO. 42

COMMENTS:

FIRST OF ALL, I SHOULD LIKE TO COMMENT ON THE SCOPE OF EFFORT EXPENDED BY THE SUB-COMMITTEE ON JUDICIARY AND THEIR STAFF IN RESEARCHING THE SUBJECTS EMBRACED BY THE SERIES OF BILLS TO BE CONSIDERED HERE TODAY. IT IS EVIDENT FROM THE SUB-COMMITTEE REPORT THAT THE VARIOUS AVENUES HAVE BEEN DEEPLY RESEARCHED, THOROUGHLY AND SERIOUSLY CONSIDERED AND SPECIFIC CONCLUSIONS REDUCED TO WHAT APPEARS GENERALLY TO US VERY WORTH WHILE LEGISLATION. THE SUB-COMMITTEE AND ITS STAFF IS TO BE COMMENDED.

AS TO SB-42 NOW UNDER CONSIDERATION, WE ENDORSE AND RECOMMEND PASSAGE.

  
W. BOYCE CLARKE, LEGISLATIVE COUNSEL  
INDEPENDENT INSURANCE AGENTS OF MONTANA

10/77

Statement of Arnold Kuenning, licensed Insurance Consultant engaged by the Independent Insurance Agents of Montana and also the Mutual Agents of Montana, to service the insurance programs of the State:

We support the governmental immunity legislation being proposed, namely Senate Bills 40 through 43. No other state has taken quite the same approach to "sovereign" immunity as Montana, and this fact leaves our legislature almost without guidelines in making needed modifications. Therefore, it has seemed wise to use caution and careful study in setting new standards. It is quite evident that the Sovereign Immunity study committee created by the 1975 legislature has done just that during the past two years in developing these bills, particularly Senate Bill 43, and we commend them for their efforts.

We hope that these will alleviate some of the potential dangers of unlimited and unrestricted immunity, so that the State and its subdivisions can deal more effectively with tort claims. This is true whether they are assuming the risks of liability themselves or transferring them to others through the medium of insurance.

Our experience of recent years in attempting to find markets for insurance of all kinds makes us quite hesitant to predict whether any given risk will be easier or harder to insure tomorrow. There are still no clear answers for Montana or for any other state on what will make public lines attractive to insurance carriers, as there are many factors which influence insurance marketing. However, we are hopeful that this legislation will be a step toward easing the problem.

\* \* \* \* \*

Although we have not had time to thoroughly consider Senate Bill 53, which is related to the immunity amendments, we agree that some action of this nature is required to give the State the flexibility needed to maintain a realistic balance between assumed risk and insured risk.

Chairman Turnage asked her if she had seen Senate Bill 58. Ms. Dieziger said that she did not feel it covered everything contained in S.B. 95.

There were no opponents to this bill present.

In answer to questions of the Chairman regarding the definition of peer review committee and audit committee, Mary Mouat of St. Peters Hospital and the Montana Nurses Assn., said that a peer review committee deals with somebody within your own profession and that the audit committee is one set up to deal with specific problems and would set certain standards of care. She further testified that the audit committee is not covered by a peer review committee.

At this time, Chairman Turnage told the witnesses that the committee would ask for the return of Senate Bill 58 and try to make one bill which would be acceptable to them. He assigned Senators Olsen and Lensink to work on this matter. The witnesses were then thanked for appearing and excused.

DISPOSITION OF SENATE BILLS 40, 41, 42, 43 and 53:

SENATE BILL 43 - Senator Towe moved to amend page 5, section 8, line 4, following "may" by inserting ", in its sole discretion," and following "for" by inserting "noneconomic damages or";

And to further amend page 5, section 8, on line 6, following "section" by inserting ", or both,";

And to further amend page 5, section 8, on line 7, following "judgment." by inserting "No insurer is liable for such noneconomic damages or excess economic damages unless specifically authorized in the contract of insurance."

The above motion carried unanimously.

Senator Towe then moved that Senate Bill 43, as amended, DO PASS. The motion carried unanimously.

SENATE BILL 53 - Senator Towe moved DO PASS. The motion carried unanimously.

SENATE BILL 41 - Senator Lensink moved DO NOT PASS. As a substitute motion, Senator Regan moved to pass consideration for the day. The substitute motion of Senator Regan carried on a vote of 5 - 3. (See attached voting record)

The Chairman assigned a subcommittee of one, namely, Senator Regan, to research S.B. 41 and report back in about ten days.

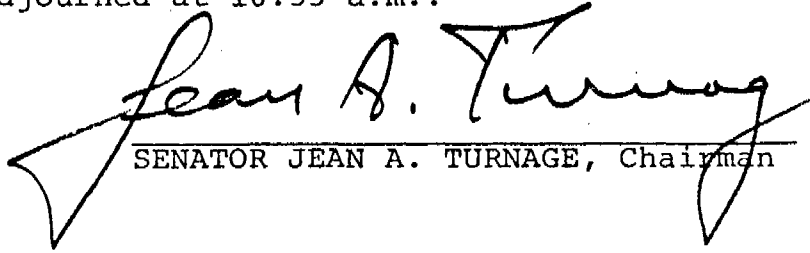
SENATE BILL 40 - Senator Towe moved DO PASS. Motion carried unanimously.

SENATE BILL 42 - Senator Towe moved DO PASS. The motion carried unanimously.

DISPOSITION OF SENATE BILL 56

Senator Towe moved DO NOT PASS. The motion carried with Senator Roberts voting "No".

There being no further business before this committee at this time, the committee adjourned at 10:55 a.m..

  
SENATOR JEAN A. TURNAGE, Chairman

## ROLL CALL

## JUDICIARY

## COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date \_\_\_\_\_

4/20/77

[illegible]

# STANDING COMMITTEE REPORT

.....January 20,..... 19 77.....

MR. ....PRESIDENT:.....

We, your committee on .....JUDICIARY.....

having had under consideration .....SENATE..... Bill No. 42.....

Respectfully report as follows: That.....SENATE..... Bill No. 42.....

DO PASS



JUDICIARY COMMITTEE

45th Legislature

| Bill No. | Subject Matter                                                                                                         | Date In | Sponsor    | Hearing Date               | Committee Action                  | Date Out |
|----------|------------------------------------------------------------------------------------------------------------------------|---------|------------|----------------------------|-----------------------------------|----------|
| HB 560   | require the dept of natural resources and conservation to study cooney dam, the dam spillway etc.                      | 1-27    | Burnett    | Tues 1                     | "WATER"<br><br>do not pass        | 2-16     |
| HB 573   | to provide for the use of navigable waters in Mont. for recreational purposes, etc.                                    | 1-27    | Huennekens | Thursday<br>3rd<br>10 a.m. | "WATER"<br><br>do pass as amended | 2-9      |
| SB 42    | to continue certain immunities from suit established by certain statutes by reenacting the statutes, etc.              | 1-27    | Towe       | March 8                    | concurred in                      | 3-10     |
| SB 43    | provide state, counties, towns, other local gvt. entities and the officers agents, employees, etc. immunity from suit, | 1-27    | Towe       | March 8                    | concurred in                      | 3-10     |
| SB 53    | authorize establishment of self-insurance programs for state & local gvt with guidelines, etc. judgments against, etc. | 1-27    | Towe       | March 8                    | concurred in<br>amended           | 3/22     |
| HB 559   | to submit to the qualified electors of Montana an amendment etc. const. age of majority to 19 years                    | 1-27    | Teague     | Thursday<br>3rd            | do pass                           | 2-7      |

## JUDICIARY COMMITTEE

March 8, 1977

The regular meeting of the House Judiciary Committee was held on Tuesday, March 8 at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana. Chairmam Scully presided. All members were present with the exception of Representative Colburn.

Scheduled for hearing were Senate Bills 40, 42, 43 and 53.

SENATOR TOWE, sponsor of the bills asked that Senate Bill 41 be included, since it is part of the package of bills. The committee agreed to hear this bill along with the others.

### SENATOR TOWE:

These bills are part of the interim study. The new Montana constitution spelled out that there would be no sovereign immunity. He discussed the reason for sovereign immunity and how it came about, the fact that in common law the king could do no wrong. He explained the insurance and the \$25,000 deductible. The bills dealing with constitutional amendments must have 2/3 of the legislature voting in order to pass. He said he felt the approach to drafting the bills was somewhat unique. We are preserving the right to sue, however we are limiting the amount of damages in some instances. Each of the bills does a separate thing which I will explain.

1. #43 is the main bill.
2. #53 is the 2nd bill and involves a self-insurance fund.
3. #41 sets a limit on attorneys fees.
4. #42 reinserts certain portions of the constitution.
5. #40 is a clean-up or repealer.

First, #43. He discussed the tangible and intangible, the economic and non-economic things you can sue for. The non-economic is not allowed for.

#53 is the self-insurance bill. It allows for a deductible self-insurance program and reserve. He explained the sources and stated that if the judgment cannot be paid from these four sources it cannot be paid.

#41 regulates the attorneys fees. The attorney must file a claim. The district court may regulate the amount of the attorneys fee.

#42 concerns the constitutional amendments needed. One of the existing things in the law that allow someone to sue are invalid in the new constitution. They must be reinstated with a 2/3 vote.

#40 repeals and revises certain sections of the law. He went through the bill and explained the general practice of law.

The Senator said that SB 42 and 43 need 2/3 vote in order to pass. He wished to remind the committee of this. The Senator also said they had not found anyone opposed to any of these bills.

March 8, 1977  
Page 2

PROPONENT MIKE YOUNG, DEPARTMENT OF STATE ADMINISTRATION:  
We would like to thank the committee for the amount of time they have spent. As a practical matter we will still insure for the same amount of money which is 1 million dollars. We favor the bills.

PROPONENT, GLEN DRAKE, LEAGUE OF CITIES & TOWNS & AMERICAN INSURANCE CORPORATION:  
We are in support of the bills.

PROPONENT, GREG McCURDY:  
I am in favor of the bills.

PROPONENT, BOISE CLARK, INDEPENDENT INSURANCE AGENTS:  
I would like to reiterate the fine work that has been done by the sub-committee. There are just a couple of comments I want to make. He talked about the study on government liability risks. Attached is a copy of the testimony on each of the bills by Mr. Clark.

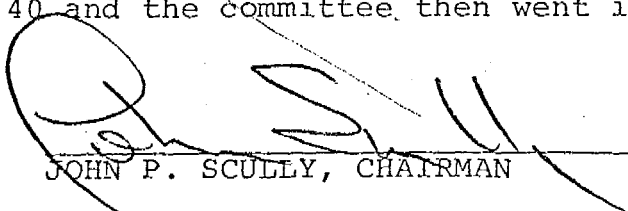
REPERSENTATIVE KEYSER:  
on page 8 of SB 53, how long can the state or county delay making the payment.

SENATOR TOWE:  
The payment may be delayed but if there is an abuse in any area, we may have to put in an amendment to change that.

REPRESENTATIVE EUDAILY and SENATOR TOWE:  
discussion about the special levy up to 10 mills. Discussion about the insurance costs and how the reduced liability might reduce the price.

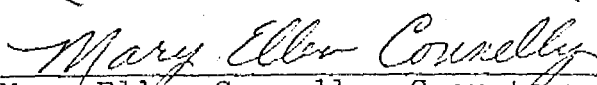
No further questions the hearing closed on the series of bills.

The meeting adjourned at 8:40 and the committee then went into executive session.



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JOHN P. SCULLY, CHAIRMAN



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Mary Ellen Connelly, Secretary

## JUDICIARY COMMITTEE

Executive session  
March 10, 1977

The executive session followed the regular meeting of the House Judiciary committee on Thursday, March 10 at 8:30 a.m. in room 436 of the Capitol Building, Helena, Montana. Members absent and not voting were Representatives Dussault and Kennerly.

### SENATE BILL #41:

REPRESENTATIVE LORY moved "be concurred in".  
The motion carried with the vote unanimous.

### SENATE BILL #42:

REPRESENTATIVE CONROY moved "be concurred in".  
The motion carried with Representative Hand voting "no".

### SENATE BILL #43:

REPRESENTATIVE RAMIREZ moved "be concurred in".  
The motion carried with the vote unanimous.

### SENATE BILL #53:

REPRESENTATIVE LORY moved "be concurred in".  
Representative Eudaily reported what he had found out on the school fund. There is a special school fund in budgets for liability coverage. That would make it possible for them to set up this fund and levy this millage. There is no reserve fund but the schools feel this can be set up. After additional discussion it was decided to pass consideration for the day until the members had more time to study the bill.

### SENATE BILL #58:

REPRESENTATIVE EUDAILY moved "be concurred in".  
A general discussion followed about what this bill does.  
The question was called and the motion carried with the vote unanimous.

### SENATE BILL #119:

REPRESENTATIVE KEYSER moved "be concurred in".  
Representative Ramirez moved to amend a section he was concerned about. A discussion followed about workmen's compensation and how this bill would be affected by the portion dealing with that subject. Representative Ramirez withdrew his motion and the original motion was back in force. The question was called and the motion carried with the vote unanimous.

### SENATE BILL #176:

REPRESENTATIVE LORY moved "be concurred in".  
The motion carried with Representative Day voting "no".

### SENATE BILL #215:

REPRESENTATIVE CONROY moved "be concurred in".  
The motion carried with the vote unanimous.

## SENATE BILL NO. 42

INTRODUCED BY TOWE, TURNAGE

(Interim Judiciary Committee Bill)

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTINUE CERTAIN IMMUNITIES FROM SUIT ESTABLISHED BY CERTAIN STATUTES BY REENACTING THESE STATUTES UNDER PROVISIONS OF ARTICLE II, SECTION 18, OF THE CONSTITUTION OF THE STATE OF MONTANA; AMENDING, CLARIFYING, AND REENACTING SECTIONS 28-603, 77-2308, 89-115, AND 89-3514, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-603, R.C.M. 1947, is amended to read as follows:

"28-603. Powers of board. (1) Boards of county commissioners may in their discretion establish fire seasons annually during which no person ~~shall~~ may ignite or set any forest fire, or ~~slash-burning~~ slash-burning fire, or ~~land clearing~~ land-clearing fire, or ~~debris-burning~~ debris-burning fire, or any open fire, within any forest, range, or crop lands, subject to the provisions of this act, without having obtained an official written permit to ignite or set such fire from a county rural fire chief or from a district rural fire chief authorized by the board to issue such permits for such lands.

(2) Any person who ~~shall-ignite~~ ignites or ~~set~~ sets any forest fire, or ~~slash-burning~~ slash-burning fire, or ~~land-clearing~~ land-clearing fire, or ~~debris-burning~~ debris-burning fire, or any open fire, within any forest, range, or crop land subject to the provisions of this act without first having obtained a written permit to ignite or set such fire ~~shall-be~~ is guilty of a misdemeanor.

(3) To augment rural crews in case of serious emergency, the boards may provide for the organization and training of voluntary urban fire crews to be used in rural areas.

(4) Any county rural fire chief ~~and/or~~ district rural fire chief or his deputy may enter private property ~~either with-or-without or direct the entry of~~ fire control crews for the purpose of suppressing fires, ~~and are exempt from any damage resulting from such activity. A chief or deputy and the county or rural district are immune from suit for injury to persons or property resulting from actions taken to suppress fires under this subsection.~~

(5) The board is authorized to appropriate from the general fund of the county not to exceed ~~fifteen-thousand dollars~~ (\$15,000) per year for the purchase, care, and maintenance of ~~fire-fighting~~ firefighting equipment, or for the payment of wages to skilled operators of heavy mechanized equipment in the suppression of fires when deemed

1 ~~considered~~ necessary; or if the general fund is budgeted to  
2 the full limit, the board may at any time fixed by law for  
3 levy and assessment of taxes levy a tax at such rate as in  
4 their judgment will be necessary to raise such needed sum  
5 not to exceed ~~fifteen-thousand-dollars-(\$15,000).~~"

6 Section 2. Section 77-2308, R.C.M. 1947, is amended to  
7 read as follows:

8 "77-2308. Immunity from liability. (1) Neither the  
9 state nor any political subdivision of the state, nor the  
10 agents or representatives of the state or any political  
11 subdivision thereof, ~~shall be~~ are liable for personal injury  
12 or property damage sustained by any person appointed or  
13 acting as a volunteer civilian defense worker, or member of  
14 any agency engaged in civilian defense activity during a  
15 disaster or catastrophe. This section does not affect the  
16 right of any person to receive benefits or compensation to  
17 which he might otherwise be entitled under the ~~workmen's~~  
18 ~~workers'~~ compensation law or any pension law or any act of  
19 Congress ~~Congress~~.

20 (2) Neither the state nor any political subdivision of  
21 the state, nor, except in cases of willful misconduct, gross  
22 negligence, or bad faith, the employees, agents, or  
23 representatives of the state or any political subdivision  
24 thereof, nor any volunteer or auxiliary civilian defense  
25 worker or member of any agency engaged in civilian defense

1 activity during a disaster or catastrophe, nor the owners of  
2 facilities used for civil defense shelters, pursuant to a  
3 fallout shelter license or privilege agreement and while  
4 complying with or reasonably attempting to comply with this  
5 chapter, or any order, ~~or~~ rule, ~~or~~ regulation promulgated  
6 under the provisions of this chapter, or pursuant to any  
7 ordinance relating to blackout or other precautionary  
8 measures enacted by any political subdivisions of the state,  
9 ~~shall be~~ are liable for the death of or injury to persons,  
10 or for damage to property, as a result of any such  
11 activity."

12 Section 3. Section 89-115, R.C.M. 1947, is amended to  
13 read as follows:

14 "89-115. Water funds -- rates -- sale of water --  
15 appeals to board -- lease and sale of water rights and  
16 property. (1) Subject to this act and ~~section~~ 89-103.2, the  
17 department may fix and establish the prices, rates, and  
18 charges at which the resources and facilities made available  
19 under this act may be sold and disposed of, ~~and~~ enter into  
20 contracts and agreements, and do those things which in its  
21 judgment are necessary, convenient, or expedient for the  
22 accomplishment of the purposes and objects of this act,  
23 under such general regulations, and upon such terms,  
24 limitations, and conditions as it prescribes, the ~~Ihe~~  
25 department shall enter into the contracts and fix and

1 establish the prices, rates, and charges so as to provide at  
 2 all times funds which will be sufficient to pay all costs of  
 3 operation and maintenance of the works authorized by this  
 4 act, together with necessary repairs thereto, and which will  
 5 provide at all times sufficient funds to meet and pay the  
 6 principal and interest of all bonds or loans as they  
 7 severally become due and payable; ~~this~~ this act does not  
 8 authorize any change, alteration, or revision of those  
 9 rates, prices, or charges as established by any contract  
 10 entered into under this act except as provided by the  
 11 contract.

12 (2) An incorporated water users' association that is  
 13 sustaining and responsible for the operations of a works is  
 14 solely liable for any court action which may be brought  
 15 against it ~~or the state of Montana~~ for any injury or damages  
 16 occurring on the works caused by a failure to maintain safe  
 17 working and operating conditions. The state of Montana is  
 18 not liable for injury to a person or property that occurs on  
 19 a works as a result of a failure by a water users'  
 20 association to maintain the works in a safe working and  
 21 operating condition.

22 (3) A contract made by the department for the sale of  
 23 water, use of water, water storage, or other service, or for  
 24 the sale of any property or facilities, shall provide that  
 25 in the event of a failure or default in the payment of

1 moneys specified in the contract to be paid to the  
 2 department, the department may, upon notice as is prescribed  
 3 in the contract, terminate the contract and all obligations  
 4 thereunder. The act of the department in ceasing on default  
 5 to furnish or deliver water, use of water, water storage, or  
 6 other service under the contract does not deprive the  
 7 department of, or limit any remedy provided by the contract  
 8 or by law for the recovery of moneys due or which may become  
 9 due under the contract.

10 (4) (a) A person aggrieved by a decision of the  
 11 department to terminate any contract under subsection (3)  
 12 may appeal to the board and be heard thereon by filing  
 13 written notice of the appeal with the department within ten  
 14 ~~10~~ days after receiving notice of termination of the  
 15 contract from the department. The termination of the  
 16 contract ~~shall be~~ is stayed if an appeal is taken.

17 (b) If a dispute arises between the department and  
 18 another party regarding amounts owing or the terms and  
 19 conditions under a water marketing or water purchase  
 20 contract, or under a contract for the construction or repair  
 21 of works, that party may appeal to the board for a hearing  
 22 thereon, and a resolution of the dispute by filing written  
 23 notice of the appeal with the department within ~~thirty~~ 30  
 24 days after the final decision of the department regarding  
 25 the dispute.

1 (5) Subject to the approval of the board, under section  
 2 89-103.2, the department may sell, transfer to water user  
 3 associations, abandon<sub>1</sub> or otherwise dispose of any ~~rights-of~~  
 4 ~~way rights-of-way~~, easements<sub>1</sub> or property when it determines  
 5 that they are no longer needed for the purposes of this act  
 6 or lease or rent the same or otherwise take and receive the  
 7 income or profit and revenue therefrom. A determination  
 8 shall be made by the department as to the market value of  
 9 ~~rights-of-way rights-of-way~~, easements<sub>1</sub> or property to be  
 10 sold, transferred, abandoned<sub>1</sub> or otherwise disposed of. All  
 11 income or profit and revenue of the works and all moneys  
 12 received from the sale or disposal of water, use of water,  
 13 water storage, or other service, and from the operation,  
 14 lease, sale<sub>1</sub> or other disposition of the works, property<sub>1</sub>  
 15 and facilities acquired under this act, shall be deposited  
 16 to the state general fund."

17 Section 4. Section 89-3514, R.C.M. 1947, is amended, to  
 18 read as follows:

19 "89-3514. Permit construed as added requirement --  
 20 exception -- immunity. (1) The granting of a permit under  
 21 this act does not affect any other type of approval required  
 22 by any other statute or ordinance of the state, of any  
 23 political subdivision<sub>1</sub> or of the United States, but is an  
 24 added requirement; however, if a political subdivision  
 25 enacts<sub>1</sub> in harmony with the purposes of this act, permit

1 issuance ordinances, regulations<sub>1</sub> or resolutions and  
 2 land-use ordinances, regulations<sub>1</sub> or resolutions which meet  
 3 or exceed the minimum standards of the board, and if the  
 4 administrative and enforcement procedures established for  
 5 those ordinances, regulations, or resolutions are found  
 6 acceptable by the board, no permit from the department is  
 7 required; however, if the board determines that there is a  
 8 failure by a political subdivision to comply with the  
 9 intent, purposes<sub>1</sub> and provisions of this act and the minimum  
 10 standards adopted thereunder, the powers of the political  
 11 subdivision may be suspended after hearing, and the minimum  
 12 standards adopted by the board shall be enforced by the  
 13 department until such time as the board determines that the  
 14 political subdivision will comply. The grant or denial of a  
 15 permit does not have an effect on a remedy of a person at  
 16 law or in equity; however, where it is shown that there is a  
 17 wrongful failure to comply with this act, there is a  
 18 rebuttable presumption that the obstruction was the  
 19 proximate cause of the flooding of the land of a person  
 20 bringing suit.

21 (2) An action for damages sustained because of injury  
 22 caused by an obstruction for which a permit has been granted  
 23 under this act may not be brought against the state, the  
 24 board, a member of the board, or the department. This act  
 25 does not interfere with the right of the United States to



SB 0042/02

- 1 regulate interstate commerce or the navigable waters of the
- 2 United States."

-End-

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